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BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNFAIR LABOR PRACTICE  
CHARGE #7, 1977)

RETAIL CLERKS UNION LOCAL #991  
affiliated with Retail Clerks  
International Constitution, AFL-CIO,  
Complainant,  
vs-  
UNIVERSITY OF MONTANA  
MISSOULA, MONTANA,  
Defendant.

FINAL ORDER

\*\*\*\*\*

A Proposed Findings of Fact, Conclusions of Law and Order  
was issued by Hearing Examiner, Jerry L. Painter, on May 20,  
1977.

Exceptions to Examiner Painter's Findings were filed by  
Complainant on June 24, 1977,

The matter was set for oral argument before the Board of  
Personnel Appeals on November 17, 1977. Complainant waived the  
right to argue orally and submitted a brief dated November 22,  
1977 and received November 28, 1977 in lieu of oral argument.  
Defendant appeared before the Board on November 17, 1977 and  
submitted briefs and memorandum in support of the Findings of  
Fact, Conclusions of Law and Recommended Order of the Hearing  
Examiner.

After reviewing the record and briefs, the Board makes the  
following Order:

1. IT IS ORDERED, that the Exceptions to the Hearing  
Examiner's Proposed Findings of Fact, Conclusions of Law and  
Proposed Order are denied.

2. IT IS ORDERED, that this Board therefore adopts the  
Findings of Fact, Conclusions of Law and Order issued by Examiner  
Painter on May 20, 1977.

Dated this 23rd day of December, 1977.

BOARD OF PERSONNEL APPEALS  
BY Brent Crowley  
Brent Crowley, Chairman



1                   BEFORE THE BOARD OF PERSONNEL APPEALS  
2   IN THE MATTER OF UNFAIR LABOR PRACTICE CHARGE #7, 1977:

3   RETAIL CLERKS UNION LOCAL #991  
4   affiliated with Retail Clerks  
5   International Constitution, AFL-CIO,

6                   Complainant,

7                   -V5-

8   UNIVERSITY OF MONTANA, MISSOULA,  
9   MONTANA,

10                  Defendant.

11                   FINDINGS OF FACT  
12                   CONCLUSION OF LAW  
13                   AND RECOMMENDED ORDER

14   \* \* \* \* \*

15                   INTRODUCTION

16       An unfair labor practice charge was filed by Complainant  
17   charging Defendant with a violation of Section 59-1605(1)(a) and  
18   (b), R.C.M. 1947. A hearing was held in the matter on April  
19   19, 1977. Complainant was represented at that hearing by Mr.  
20   Joseph Duffy. Defendant was represented by Mr. George Mitchell.  
21   The hearing examiner was Jerry Painter. After considering  
22   Complainant's case-in-chief, the complaint was dismissed by the  
23   hearing examiner. The following are my Findings of Fact,  
24   Conclusion of Law, and Proposed Order.

25                   FINDINGS OF FACT

26       1. Retail Clerks Union Local #991 is the certified bar-  
27   gaining representative for the unit in question.

28       2. Mr. Tom Stockstill is the Copper Common Manager for  
29   the University Food Service Department (Complainant's Exhibit  
30   #1, Carson Veers and Christine Carver).

31       3. In November of 1976, Mr. Lloyd "Jack" Kirkland was  
32   hired as a cook for the University Food Service. (Kirkland)

      4. Mr. Kirkland was told by Mr. Stockstill, although it  
  was in passing, something to the effect "We would like to break  
  up this friggin union". The response was made in sympathy to  
  Mr. Kirkland's comment that he had to pay dues to the Retail  
  Clerks Union. Mr. Kirkland testified the comment had no effect  
  on him. (Kirkland)

1 5. Christine Carver overheard a conversation that Mr.  
2 Stockstill was involved in. Ms. Carver could not say what exactly  
3 was said. She does not know who was being talked to and what  
4 preceded or followed the conversation. What she overheard  
5 was to the effect "Management was making their move". She did  
6 not understand the statement until Mr. Kirkland related his  
7 story to her. (Carver)

8 6. In April of 1977 a Montana Public Employees Association  
9 (MPEA) representative visited members of the Retail Union who  
10 worked at the Copper Commons. Ms. Carver also received a  
11 correspondence from MPEA encouraging her to support MPEA.  
12 (Carver)

#### 13 DISCUSSION

14 Complainants charge that the Defendant has violated Sections  
15 59-1605(1)(a) and (b). The testimony, however, does not support  
16 the charge. The statement Ms. Carver overheard was fragmented,  
17 out of context, not addressed to Ms. Carver, and Ms. Carver did  
18 not know who it was addressed to. The statement in no way  
19 interfered with, restrained, or coerced Ms. Carver in the  
20 exercise of her rights as guaranteed by Section 59-1601, by  
21 her own admission.

22 The statement made by Mr. Stockstill in passing to Mr.  
23 Kirkland, by Mr. Kirkland's own admission in no way interfered  
24 with, restrained, or coerced Mr. Kirkland in the exercise of  
25 his rights guaranteed by Section 59-1603.

26 There has been absolutely no connection made whatsoever  
27 between MPEA's organization campaign and the defendant. Ms.  
28 Carver alleges that the campaign coming so close to Mr.  
29 Stockstill's statement was more than a coincidence. It does  
30 not appear to be at all a coincidence that MPEA should begin  
31 their recruitment campaign in April, the time for decertification  
32 of most public bargaining agencies.

1 The testimony taken at the hearing, even given the full  
2 weight that it can be given, in no way supports any of the  
3 alleged charges.

4 This hearing examiner was asked to take administrative  
5 notice of Unfair Labor Practice 38, 1976. This hearing examiner  
6 is intimately familiar with that case and decision and it in  
7 no way affects the subject matter involved here. There must be  
8 some showing of interference, coercion, or restraint in protected  
9 activities, for this Board cannot presume it because it has  
10 taken place before in a different factual setting. This is  
11 especially true when Complainant's own witnesses admit that  
12 there was no interference, coercion, and restraint involved in  
13 this matter. And that case had absolutely nothing to do with  
14 management's assistance in the formation of a union.

15 CONCLUSION OF LAW

16 The Complainant has failed to show any violation by the  
17 University of Montana of Section 59-1605, R.C.M. 1947, or any  
18 other section of Title 59, Chapter 16.

19  
20 ORDER

21 The Complaint filed by Complainant filed April 19, 1977,  
22 is dismissed. Pursuant to Rule MAC 24-8(26)-58330(6) a party  
23 adversely affected by this Order may file written exceptions  
24 to this decision within 20 days.

25 DATED this 20th day of May, 1977.

26 BOARD OF PERSONNEL APPEALS

27  
28 BY Jerry L. Painter  
29 Jerry L. Painter  
30 Hearing Examiner  
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